

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL W. McCAIGUE and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, Wis.

*Docket No. 97-1159; Submitted on the Record;
Issued April 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On August 3, 1985 appellant, a 33-year-old distribution clerk, filed a Form CA-2 claim based on occupational disease, asserting that he had been experiencing intense pain in his wrists and hands and that he first became aware this condition was caused or aggravated by his employment on July 26, 1985. Appellant's condition was diagnosed as bilateral carpal tunnel syndrome, for which he underwent surgery on both wrists. The Office accepted appellant's claim for bilateral carpal tunnel syndrome on November 29, 1985.

Appellant was placed on total disability on August 15, 1985 and for several periods thereafter following his surgeries, and eventually returned to light-duty positions on July 31, 1987, April 8, 1988 and May 13, 1991. Appellant filed several claims for continuing compensation and recurrence of disability based on his accepted employment condition.¹ Appellant has not worked at the employing establishment since September 18, 1992 and was placed on the periodic rolls effective January 10, 1993.

In response to an Office letter inquiring as to appellant's current condition or disability, Dr. S.K. Bahal, Board-certified in physical medicine and rehabilitation and appellant's treating physician, submitted a report dated July 16, 1993. Dr. Bahal stated that she had recently examined appellant, who related that he was "extremely stressed out" because of persistent wrist pain and sleep disturbances due to pain and that he was unable to perform daily activities at

¹ On January 21, 1992 the Office granted appellant a schedule award for permanent disability based on a 26 percent impairment for loss of use of the right arm and a 21 percent impairment for loss of use of the left arm, from December 12, 1998 through October 4, 1991.

home. Dr. Bahal opined that appellant should obtain a second opinion regarding his condition, as well as a functional capacity test and psychological examination.

In a follow-up report dated August 3, 1993, Dr. Bahal reiterated her earlier findings and recommended that appellant undergo ergonomic testing to determine his capabilities.

In order to determine appellant's current condition and state of disability, the Office scheduled appellant for a second opinion medical evaluation with Dr. L. Cass Terry, Board-certified in psychiatry and neurology, for November 30, 1993. In his December 3, 1993 report, Dr. Terry reviewed appellant's history and the statement of accepted facts, stated findings on examination and found no clear evidence on examination of carpal tunnel syndrome. Dr. Terry had appellant undergo further diagnostic tests, and subsequently opined in a June 22, 1994 report that there was neither clinical nor electrophysiologic evidence that the carpal tunnel syndrome was active and causing objective symptoms. Dr. Terry further stated that there was no evidence appellant was currently disabled for employment as a result of carpal tunnel syndrome and that the carpal tunnel syndrome had resolved with only minimal residual electrophysiologic findings. Dr. Terry advised that appellant was able to perform his duties, although he recommended that appellant avoid activities involving prolonged flexion/extension of the wrists, which could aggravate his carpal tunnel syndrome.

By letter dated August 29, 1994, the Office issued a notice of proposed termination to appellant. The Office stated that it had attempted to obtain a medical report updating appellant's current condition from Dr. Bahal, but that Dr. Bahal had twice failed to respond to its requests that she submit such a report. The Office stated that it had subsequently referred appellant to the second opinion physician, Dr. Terry, who submitted a thorough, probative, rationalized opinion that appellant's bilateral carpal tunnel syndrome had resolved, that he was no longer totally disabled and could perform the duties of a mail clerk. The Office stated that although Dr. Bahal had indicated in her July 16 and August 3, 1993 reports that appellant was still disabled, her opinion was not supported by objective findings or adequate rationale. The Office concluded that Dr. Terry's report represented the weight of the medical evidence with respect to the issue of whether appellant had any continuing work-related condition or disability. The Office gave appellant 30 days to submit additional medical evidence or argument in opposition to the proposed termination.

Appellant submitted a handwritten letter objecting to the proposed termination, which was received by the Office on September 3, 1994, but did not submit any additional medical evidence in support of his objection.

By decision dated October 3, 1994, the Office terminated appellant's compensation, finding that all residuals from his accepted employment-related condition had resolved as of October 16, 1994.

By letter dated October 18, 1994, appellant requested an oral hearing, which was held on April 13, 1995.

By decision dated June 30, 1995, an Office hearing representative denied appellant's request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of its previous decision.

By letter dated August 3, 1995, appellant requested reconsideration of the Office's previous decision.

By decision dated November 22, 1995, the Office denied appellant's request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of its previous decision.

By letter received by the Office on September 17, 1996, appellant requested reconsideration of the Office's previous decision. Appellant did not submit any additional medical evidence in support of his request.

By decision dated November 25, 1996, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the November 25, 1996 Office decision, which found that the letter submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the November 25, 1996 decision is the only decision, issued within one year of the date that appellant filed her appeal with the Board, February 11, 1997, this is the only decision, over which the Board has jurisdiction.²

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered

² See 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. This is important since the outstanding issue in the case -- whether appellant continued to suffer residuals from his accepted, employment-related carpal tunnel condition injury subsequent to October 16, 1994 -- is medical in nature. Additionally, appellant's September 17, 1996 letter, did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that he remained totally disabled due to his employment-related carpal tunnel condition as of October 16, 1994 and continuing, failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated November 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 15, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member